

The Gazette of India

सत्यमेव जयते

EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 2] NEW DELHI, WEDNESDAY, APRIL 5,

GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 5th April 1950.

NOTIFICATIONS

No. F.11/50-O(I).—The following Rules made by the President are published for general information:—

THE PROVISIONAL PARLIAMENT (FILLING OF CASUAL VACANCIES AND ELECTION PETITIONS) RULES, 1950

In exercise of the powers conferred by sub-clause (a) of clause (1) of article 388 of the Constitution of India and of all other powers enabling him in that behalf, the President is pleased to make the following rules for the purpose of filling casual vacancies in the seats of members of the provisional Parliament functioning under clause (1) of article 379 of the said Constitution including vacancies referred to in clauses (3) and (4) of that article and for regulating all matters in connection with the filling of such vacancies including the decision of doubts and disputes arising out of, or in connection with, elections to fill such vacancies, namely:—

Preliminary.

1 (1) These rules may be called the *Provisional Parliament (Filling of Casual Vacancies and Election Petitions) Rules, 1950*.

(2) They shall come into force at once.

2 In these rules, unless the context otherwise requires—

- (a) “candidate” means a person who has been nominated as a candidate at any election or who claims that he has been so nominated or that his nomination has been improperly refused;
- (b) “Commission” means the Election Commission appointed under article 324 of the Constitution;
- (c) “Constitution” means the Constitution of India;
- (d) “corrupt practice” means any corrupt practice of the kind specified in the Indian Legislative Assembly Electoral Rules as in force on the first day of August, 1947;
- (e) “costs” means all costs, charges and expenses of, or incidental to, an inquiry into an election petition;
- (f) “member” means a member of the provisional Parliament;

- (g) "Parliament" means the provisional Parliament functioning under clause (1) of article 379 of the Constitution;
- (h) "pleader" means any person entitled to appear and plead for another person in a civil court and includes an advocate, a vakil and an attorney of a High Court;
- (i) "President" means the President of India;
- (j) "returned candidate" means a candidate whose name has been published in the Gazette of India as a duly elected member of the provisional Parliament; and
- (k) "tribunal" means an Election Tribunal appointed by the Commission under rule 16 of these rules.

PART I—FILLING OF CASUAL VACANCIES.

3. (1) Subject to the provisions of sub-rule (2), a seat in Parliament which immediately before the commencement of the Constitution was a seat in the Constituent Assembly of India allotted to a Province or Indian State or group of Indian States represented in that Assembly before such commencement shall, on such commencement, be deemed to be a seat allotted to the corresponding State or group of States, as the case may be, and a vacancy in that seat shall, for the purposes of these rules, be deemed to be a vacancy in the seat of a member representing such corresponding State or group of States.

(2) A seat in Parliament which immediately before the commencement of the Constitution was a seat in the Constituent Assembly of India allotted to territories which, by virtue of an Order made under section 290A of the Government of India Act, 1935, were being administered before such commencement as if they formed part of a Province, shall, on such commencement, be deemed to be a seat allotted to the corresponding State and a vacancy in that seat shall, for the purposes of these rules, be deemed to be a vacancy in the seat of a member representing such corresponding State.

4. (1) When a vacancy occurs by reason of death, resignation or otherwise in the seat of a member representing a State specified in Part A of the First Schedule to the Constitution or a State specified in Part B of that Schedule having a Legislative Assembly, the President shall notify the vacancy and call upon the members of the Legislative Assembly of the State concerned to elect a person for the purpose of filling the vacancy.

(2) For the purpose of filling any such vacancy as is referred to in sub-rule (1) the President shall make a request in writing to the Speaker of the Legislative Assembly of the State concerned for the election of a person to fill the vacancy as soon as may reasonably be practicable.

(3) At any such election every member of the Legislative Assembly of the State concerned shall be entitled to participate and vote.

(4) Where the seat of a member representing a State specified in Part A of the First Schedule to the Constitution was immediately before it became vacant held by a person belonging to the Scheduled Castes, or to the Muslim or the Sikh community, no person shall, except where the President otherwise directs, be qualified to be chosen to fill that seat unless such person belongs to the Scheduled Castes or the Muslim or the Sikh Community, as the case may be.

(5) Every notification issued under sub-rule (1) or request made under sub-rule (2) for the filling of a vacancy in any such seat, as is referred to in sub-

rule (4), shall specify whether or not the person to fill that seat shall belong to the Scheduled Castes or to the Muslim or the Sikh community, as the case may be.

(6) At an election under this rule to fill more vacancies than one, a member of the State Legislative Assembly shall have as many votes as there are seats to be filled but shall not give more than one vote to any one candidate.

(7) As soon as may be after the receipt of the request mentioned in sub-rule (2), the Speaker of the Legislative Assembly concerned—

(a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer at such election;

(b) shall also appoint by suitable notification—

(i) a date, not later than ten days after the date of the notification, on or before which nominations of candidates are to be made;

(ii) a further date, not later than the third day after the first-mentioned date for the scrutiny of nominations;

(iii) a further date, not later than two days after the scrutiny, on or before which candidatures may be withdrawn; and

(iv) a further date, not later than ten days from the date fixed under sub-clause (iii) for the withdrawal of candidatures, on which a poll shall, if necessary, be taken.

(8) The Speaker of the Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall commence and the hour at which it shall close on the date fixed under sub-clause (iv) of clause (b) of sub-rule (7) and the place at which the poll shall be taken.

(9) The votes at any such election shall be given by ballot and in person

Provided that when the State Legislative Assembly is not in session, votes may, at the option of the voter, be given in person or by registered post.

Provided further that no votes shall be given by proxy.

(10) The ballot paper shall contain the names of the validly nominated candidates arranged alphabetically and the votes shall be recorded by placing a cross on the ballot paper opposite the name of the candidate or, when more vacancies than one are to be filled, by placing crosses on the ballot paper, subject to the provisions of sub-rule (6), opposite the names of the candidates for whom the voter desires to vote.

(11) After the votes are duly counted, the result of the election shall be declared and reported to the Secretary to the Government of India in the Ministry of Law, the Secretary to Parliament and the Secretary to the Election Commission, and the declaration containing the name or names of the candidate or candidates elected shall be published in the Official Gazette of the State.

(12) Where a poll is taken at an election under this rule to fill more than one vacancy and the vacancies to be filled include a vacancy or vacancies to be filled by a person or persons belonging to the Scheduled Castes, or the Muslim or the Sikh community, the Returning Officer shall, after the counting of votes has been completed, out of the total number of candidates for all the vacancies, first declare elected to the vacancy or vacancies to be filled by a candidate or candidates belonging to the Scheduled Castes or the Muslim or the Sikh community, the candidate or candidates belonging to the Scheduled Castes or the Muslim or the Sikh community, as the case may be, to whom the largest

number of valid votes has been given, and then out of the remaining candidates he shall declare elected to the vacancy or vacancies which is or are not to be so filled, the candidate or candidates to whom the largest number of valid votes has been given.

(13) Where an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, the determination of the person or persons to whom such one additional vote shall be deemed to have been given, shall be made by lot to be drawn in the presence of the Returning Officer and in such manner as he may determine.

(14) Save as otherwise provided in these rules, the election by the members of the Legislative Assembly of a State to Parliament shall be held *mutatis mutandis* in accordance with the rules and regulations for the time being in force in regard to elections held by the said Assembly and where no such rules and regulations exist, in accordance with the orders that may be made in this behalf by the President.

Where any such rules or regulations exist, it shall be competent for the Speaker of the State Legislative Assembly concerned to make with the prior approval of the President such modifications therein as may be necessary for the purpose of this sub-rule.

5. (1) If any vacancy occurs by reason of death, resignation or otherwise in the seat of a member representing a State specified in Part B of the First Schedule to the Constitution having no Legislative Assembly, the President shall notify the vacancy and make a request in writing to the Rajpramukh of the State concerned to nominate, as soon as may be, a person to fill the vacancy.

(2) On the completion of the nomination of the representative or representatives of a State, the Rajpramukh shall notify the name or names of the person or persons so nominated in the Official Gazette of the State and shall cause a copy of the notification to be communicated to the Secretary to the Government of India in the Ministry of Law, the Secretary to Parliament and the Secretary to the Election Commission.

(3) The representative or representatives of the State of Jammu and Kashmir to be chosen to fill a vacancy or vacancies referred to in sub-rule (1) shall be nominated by the Rajpramukh of the State on the advice of his Prime Minister.

6. (1) If any vacancy occurs by reason of death, resignation or otherwise in the seat of a member representing Coorg, the President shall notify the vacancy and call upon the members of the Coorg Legislative Council to elect a person for the purpose of filling the vacancy.

(2) For the purpose of filling any such vacancy, as is referred to in sub-rule (1), the President shall make a request to the President of the Coorg Legislative Council for the election of a person to fill the vacancy as soon as may reasonably be practicable.

(3) At an election to fill any such vacancy, as is referred to in sub-rule (1), only the non-official members of the Coorg Legislative Council shall be entitled to participate and vote.

(4) The provisions of sub-rules (7), (8), (9), (10), (11), (13) and (14) of rule 4 shall apply in relation to the filling of a casual vacancy in the seat of a member representing Coorg under this rule as they apply in relation to the filling of any such vacancy in the seat of a member representing a State specified

in Part A of the First Schedule to the Constitution under rule 4, subject to the following modifications, namely:

- (a) that for references to the State Legislative Assembly there shall be substituted references to the Coorg Legislative Council, and
- (b) that for references to the Speaker of the State Legislative Assembly there shall be substituted references to the President of the Coorg Legislative Council.

7. If any vacancy occurs by reason of death, resignation or otherwise in the seat of a member representing Delhi or Ajmer, the President shall notify the vacancy and thereupon the vacancy shall be filled by election held, as nearly as may be, in accordance with the procedure prescribed by the Legislative Assembly Electoral Rules as in force on the first day of August, 1947, for the election of a member to represent the Delhi or, as the case may be, the Ajmer-Merwara constituency of the Indian Legislative Assembly.

8. If any vacancy occurs by reason of death, resignation or otherwise in the seat of a member representing the State of Bhopal, Kutch or Vindhya Pradesh or the group of States of Himachal Pradesh and Bilaspur or Tripura and Manipur, the President shall notify the vacancy and the vacancy shall be filled by a person nominated by the President.

9. The name or names of the member or members elected by the Legislative Assembly of a State or the Legislative Council of Coorg and of the member or members nominated by the Rajpramukh of a State or by the President to fill any casual vacancy or vacancies under these rules shall be published in the *Gazette of India*.

10. Where a notification has been issued, or a request has been made by the President of the Constituent Assembly of India, for the filling of a casual vacancy in the seat of a member under the rules relating to the filling of such vacancies in the Constituent Assembly of India and at the commencement of the Constitution the said vacancy has remained unfilled, the provisions of these rules shall apply to the filling of that vacancy as if the said notification has been issued or the said request has been made under the corresponding provisions of these rules.

PART II—DECISION OF DOUBTS AND DISPUTES AS TO THE VALIDITY OF AN ELECTION

11. No election shall be called in question except by an election petition presented in accordance with the provisions contained in these rules.

12 (1) An election petition against any returned candidate may be presented to the President by any candidate or elector on the ground of any irregularity or corrupt practice—

- (a) in the case of elections to Parliament held before the publication of these rules, within fifteen days from the date on which these rules are published in the *Gazette of India*;
- (b) in the case of any subsequent election, within thirty days from the date on which the result of the election is published in the *Gazette of India*.

(2) An election petition shall be deemed to have been presented to the President when it is delivered to the Secretary to the Government of India in the Ministry of Law or any other officer appointed by the President in that behalf—

- (a) by the person making the petition; or

(b) by the person authorised in writing in that behalf by the person making the petition; or

(c) by registered post.

(3) When the last day of the period for the presentation of an election petition under this rule is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881, or has been notified by the Central Government as a day to be observed as a holiday in the Central Government Offices, the petition shall be considered as having been received in due time if it is presented on the next succeeding day which is neither such a public holiday nor a day so notified.

13. (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

(2) A tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow any particulars mentioned in the petition to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

14 The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate claim a declaration that he himself has been duly elected in which case he shall join as respondents to his petition all other candidates who were nominated at the election.

15 At the time of the presentation of the petition the petitioner shall deposit the sum of rupees one thousand in cash or in Government promissory notes of equal value at the market rate of the day as security for the costs of the case.

16. (1) If the provisions of rule 12 or rule 15 are not complied with, the President shall dismiss the petition:

Provided that if a person making the petition satisfies the President that sufficient cause existed for his not presenting the petition within the period prescribed under rule 12, the President shall have the discretion to condone the failure to comply with that rule.

(2) If the petition is not dismissed under sub-rule (1), the President shall immediately forward the same to the Commission who shall appoint an election tribunal for the trial of the petition consisting of three persons who are, or have been, or are eligible to be appointed, Judges of a High Court, and shall appoint one of them to be the President thereof:

Provided that nothing in this sub-rule shall be deemed to prevent the appointment of the President of a tribunal before the other members thereof are appointed.

(3) Subject to the provisions of this rule, all applications and proceedings in connection with the petition shall be dealt with by, and carried on by or before, the tribunal.

(4) Where in respect of an election more petitions than one are presented, the Commission shall refer all those petitions to the same tribunal which may, at its discretion, inquire into the petitions either separately or in one or more groups, as it thinks fit.

(5) If the services of any member of the tribunal are not available for the purposes of the inquiry, or if during the course of the inquiry any member of the tribunal is unable to continue to attend thereat, the Commission shall appoint another member and the inquiry shall recommence before the tribunal as so reconstituted:

Provided that the tribunal may direct that any evidence already recorded shall remain upon record, and in that case it shall not be necessary to re-examine those witnesses who have already been examined and discharged.

(6) References to the tribunal in this Part shall, as respects any matter to be done before the commencement of the inquiry, be deemed to be references to the President of the tribunal.

17. When at the inquiry into an election petition the tribunal so orders, the Attorney-General of India or some person acting under his instructions shall attend and shall take such part therein as the tribunal may direct.

18. If the petition is not dismissed under rule 16, the tribunal shall, as soon as may be, cause a copy of the petition to be served on each respondent and to be published in the *Gazette of India* and may call upon the petitioner to execute a bond in such amount and with such sureties as the tribunal may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on giving security in a like amount or by procuring the execution of a like bond.

19. (1) Subject to the provisions of these rules, every election petition shall be inquired into by the tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:

Provided that it shall only be necessary for the tribunal to make a memorandum of the substance of the evidence of any witness examined by the tribunal.

(2) The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of these rules, be deemed to apply in all respects to an inquiry into an election petition.

20. Any appearance, application or act before the tribunal may be made or done by the party in person or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the tribunal so directs, be made by the party in person.

21. The inquiry shall be held at such place as the Commission may appoint.

Provided that a tribunal may in its discretion sit for any part of the inquiry at any other place in the State in which the election, to which the petition relates, has taken place and may depute any one of the members thereof to take evidence at any place in that State.

22. (1) Any election petition may be withdrawn only by leave of the tribunal or, if an application for withdrawal is made before a tribunal has been appointed, of the President.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made to the tribunal notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the *Gazette of India*.

(4) No application for withdrawal shall be granted if, in the opinion of the President, or of the tribunal, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(5) If the application is granted—

(a) the petitioner shall, where the application has been made to the tribunal, be ordered to pay the costs of the respondents theretofore incurred or such portion thereof as the tribunal may think fit;

- (b) notice of the withdrawal shall be published in the *Gazette of India* by the President or by the tribunal, as the case may be; and
- (c) any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions of rule 15 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the tribunal may think fit.

(6) When an application for withdrawal is granted by the tribunal and no person has been substituted as petitioner in place of the party withdrawing under clause (c) of sub-rule (5), the tribunal shall report the fact to the Commission.

23. The President shall not dismiss an election petition under sub-rule (1) of rule 16 or grant leave to withdraw any such petition under rule 22 except with the concurrence of the Commission.

24. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Notice of the abatement of an election petition shall be published in the *Gazette of India* by the tribunal or, if it abates before a tribunal has been appointed, by the President.

(3) Any person who might himself have been a petitioner may within fourteen days of such publication, apply to be substituted as petitioner, and upon compliance with the conditions, of rule 15 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the tribunal may think fit.

25. If before the conclusion of the inquiry into an election petition, the respondent dies or gives notice that he does not intend to oppose the petition, the tribunal shall cause notice of such event to be published in the *Gazette of India* and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted for such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the tribunal may think fit.

26. (1) Where at any inquiry into an election petition any candidate other than the returned candidate claims the seat for himself, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented complaining of his election:

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of the publication of the election petition under rule 18, given notice to the tribunal of his intention to do so and made the deposit and procured the execution of the bond referred to in rules 15 and 18 respectively.

(2) Every notice referred to in sub-rule (1) shall be accompanied by the statement required by rule 13 in the case of an election petition and shall be signed and verified in like manner.

27. If in the opinion of the tribunal the election of a returned candidate has been vitiated by a corrupt practice, or has been materially affected by the improper acceptance or rejection of any nomination or by the improper reception or refusal of a vote, or by the reception of any vote which is void, or the election has not been a free election by reason of the large number of cases in which the corrupt practice of undue influence or bribery has been exercised or committed, the election of the returned candidate shall be void.

28. (1) At the conclusion of the inquiry, the tribunal shall report whether the returned candidate, or any person who has lodged a petition and claimed a seat, has been duly elected and in so reporting shall have regard to the provisions of rule 27.

(2) The report shall further include a recommendation as to the total amount of costs which are payable and the persons by and to whom such costs shall be paid, and any such recommendation may include a recommendation for the payment of costs to the Attorney-General of India or a person acting under his instructions attending the trial in pursuance of an order of the tribunal.

(3) The report shall be signed by all the members of the tribunal and the tribunal shall forthwith submit the report to the Commission who shall forward it to the President.

(4) On receipt of the report of the tribunal the President shall issue orders in accordance with the report and publish the report in the Gazette of India, and the orders of the President shall be final.

29. If either in its report or upon any other matter there is a difference of opinion among the members of the tribunal, the opinion of the majority shall prevail and the report shall be expressed in terms of the views of the majority.

30. If in the order issued by the President under sub-rule (4) of rule 28 there is a direction for payment of costs by the petitioner to any person, such costs shall, if they have not been already paid or recovered under section 12 of the Election Offences and Inquiries Act, 1920, be paid in full or, so far as possible, out of the security deposit made by the petitioner under rule 15, and the further security deposit, if any, made by the petitioner under rule 18, on an application being made in writing in this behalf to the Secretary to the Government of India in the Ministry of Law by the person in whose favour costs have been awarded. If there is any balance left of any of the said security deposits after payment of such costs, such balance or, where no costs have been awarded, the whole of the said security deposits shall on application made in writing by the petitioner in that behalf to such Secretary be returned to the petitioner after the issue of the order of the President and the publication of the report of the tribunal under the said sub-rule.

31. A petition presented to the President of the Constituent Assembly of India before the commencement of the Constitution which was pending at such commencement shall be deemed to be a petition presented to the President under rule 12 and the provisions of this part shall apply in relation to such petition accordingly.

PART III—SPECIAL PROVISIONS.

82. If any difficulty arises as to the holding of any election under these rules, the President may with the concurrence of the Commission by order do anything not inconsistent with these rules or any provisions of the Constitution which appears to him to be necessary for the proper holding of the election.

83. (1) If any question arises as to the interpretation of these rules, otherwise than in connection with an election inquiry held thereunder, the question shall be referred for the decision of the President, and his decision shall be final.

(2) Before giving his decision on any such question the President shall obtain the opinion of the Commission and shall act according to such opinion.

No. F 11/50-C-II.—The following Rules made by the President are published for general information —

THE PROVISIONAL PARLIAMENT (REPRESENTATION OF HYDERABAD) RULES, 1950

In exercise of the powers conferred by clause (2) of article 379 of the Constitution of India and of all other powers enabling him in that behalf, the President is pleased to make the following rules, namely —

1 (1) These rules may be called the Provisional Parliament (Representation of Hyderabad) Rules, 1950

(2) They shall come into force at once

2 In these rules, Nizam means the person who for the time being is recognised by the President as the Nizam of Hyderabad

3 (1) The State of Hyderabad shall have sixteen seats in the provisional Parliament

(2) The said seats shall be filled by persons nominated by the Nizam

Provided that if a casual vacancy occurs in any of the said seats it shall be filled in accordance with the provisions contained in the Provisional Parliament (Filling of Casual Vacancies and Election Petitions) Rules, 1950

4 (1) The President shall, as soon as may be after the commencement of these rules, make a request in writing to the Nizam to nominate persons to fill the seats referred to in sub-rule (1) of rule 3

(2) On the completion of the nomination the Nizam shall notify the names of the persons nominated in the Official Gazette of the State and shall cause a copy of the said notification to be communicated to the Secretary to the Government of India in the Ministry of Law, the Secretary to Parliament and the Secretary to the Election Commission

(3) The names of the persons so nominated shall also be published in the Gazette of India

K V K SUNDARAM,
Secretary